

# Alaska State Legislature



## Senate Majority

October 21, 2014

National Freedom of Information Officer  
U.S. Environmental Protection Agency  
1200 Pennsylvania Avenue, NW (2822T)  
Washington, DC 20460

Regional Freedom of Information Officer  
U.S. EPA Region 10  
Office of External Affairs  
1200 6<sup>th</sup> Avenue (CEC – 142)  
Seattle, WA 98101

**Re: Freedom of Information Act ("FOIA") Re: January 2014 Assessment of Potential Mining Impact on Salmon Ecosystems in Bristol Bay, Alaska (EPA 910-R-14-001ES)**

Dear Honorable Sir or Ma'am:

This is Chad Hutchison. I'm the attorney for the Alaska State Senate Majority. I respectfully request, via the Freedom of Information Act ("FOIA")<sup>1</sup>, the following records:

1. Any and all data collected as part of the agency's Bristol Bay ecological risk assessment.
  - a. This shall include all peer-reviewed and non-peer reviewed scientific analysis.
  - b. This shall include, but not be limited to, the alleged scientific analysis done in the January 2014 *Assessment of Potential Mining Impact on Salmon Ecosystems in Bristol Bay, Alaska* (EPA 910-R-14-001ES).
  - c. All e-mails, with Non-Governmental Organizations re: January 2014 *Assessment of Potential Mining Impact on Salmon Ecosystems in Bristol Bay, Alaska*.
2. Any and all guidelines the EPA is using, including guidelines that may be different from the document titled *Guidelines for Ensuring and Maximizing the Quality, Objectivity, Utility, and Integrity of Information Disseminated by the Environmental Protection Agency*.
  - a. Any and all analysis of Bristol Bay as it relates to the *Guidelines for Ensuring and Maximizing the Quality, Objectivity, Utility, and Integrity of Information Disseminated by the Environmental Protection Agency*.

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<sup>1</sup> 5 U.S.C. 552 et seq.

The form of the records should include, but not be limited to documents of any kind, including:

papers, books, accounts, letters, photographs, objects, tangible things, correspondence, telegrams, cable text messages, memorandum, notes, desk calendars, diaries, notations, work papers, intra and inter-office communications, intra and inter-departmental communications, communications to, between and among officers, agents, partners, secretaries, or any other employees, transcripts, minutes, reports, and/or recording of telephone or other conversations, or interviews, or of committee meetings or of other meetings, affidavits, statements, summaries, opinions, reports, preliminary reports, studies, analogies, evaluations, insurance policies, contracts, licenses, agreements, balance sheets, income statements, questionnaires, answers to questionnaires, statistical records, appointment books, telephone logs, lists, tabulations, charts, graphs, maps, surveys, sound recordings, data sheets, computer tapes, discs, magnetic tapes, punch cards, computer printouts, data processing input and output, computer programs, computer program coding sheets, microfilms, e-communications, e-mail, text, all records kept by electronic photographic or mechanical means, and things similar to any of the foregoing, regardless of their author or origin, however denominated by it.

If the FOIA request is denied in whole or part, I expect the EPA to justify its decision, identify the withheld records, identify any privileges or immunities, and reference the specific exemptions claimed in the Act.

Fees associated with this FOIA request should be properly waived. The public interest is served by this anticipated records disclosure (because it is likely to contribute significantly to the public's understanding of EPA operations and activity). There is no primary commercial interest with this FOIA request.

In other words: I'm acting on behalf of the Alaska State Senate Majority, requesting public records to be given to the public. There is no commercial interest in this FOIA request. Nothing.

I remind the EPA:

1. The Freedom of Information Act (FOIA) is liberally construed in favor of fee waivers for noncommercial requesters. See 5 U.S.C.A. § 552(a)(4)(A)(iii). See McClellan Ecological Seepage Situation v. Carlucci, 835 F.2d 1282, 1284 (9th Cir.1987)(quoting 132 Cong. Rec. 27,190 (1986)(Sen. Leahy)).
2. The statutory standard for evaluating fee waiver requests is whether "disclosure of the information is in the public interest because it is likely to contribute significantly to public understanding of the operations or activities of the [Federal] government; and is not primarily in the commercial interest of the requester." See 5 U.S.C.A § 552(a)(4)(A)(iii).
  - a. EPA regulations at 40 C.F.R. § 2.107(1)(2) and (3) establish the same standard. EPA must consider four conditions to determine whether a request is in the public interest ("public interest prong"):
    - i. Whether the subject of the requested records concerns the operations or activities of the Federal government;
    - ii. Whether the disclosure is likely to contribute to an understanding of government operations or activities;
    - iii. Whether the disclosure is likely to contribute to public understanding of a reasonably broad audience of persons interested in the subject matter; and

- iv. Whether the disclosure is likely to contribute significantly to public understanding of government operations or activities.

I meet those standards.

- i. **Whether the subject of the requested records concerns the operations or activities of the Federal government.**

The records request concerns the operations or activities of the EPA. The request “speaks for itself.”

- ii. **Whether the disclosure is likely to contribute to an understanding of government operations or activities.**

The disclosure is likely to contribute to an understanding of government operations or activities. Alaskans are still not clear about the EPA’s alleged scientific assessment that may, unilaterally, be used to justify a potential veto for a resource development project on state land. A “review of the science” is necessary.

Thus far, the conclusions in the January 2014 *Assessment of Potential Mining Impact on Salmon Ecosystems in Bristol Bay, Alaska* (EPA 910-R-14-001ES) are unsatisfactory.

Where is the operational peer-review? What studies have been performed (beyond any alleged assessment based on “fantasy mine” scenarios)? What activities were conducted “in the field” to justify the assessment? Were studies conducted in cooperation with entities that desired to close down the mine? Did the EPA declare that conflict of interest?

The public, via the Senate Majority, has a right to know about the “unknown reasons” for EPA operation and activities related to Bristol Bay.

- iii. **Whether the disclosure is likely to contribute to public understanding of a reasonably broad audience of persons interested in the subject matter.**

The disclosure will contribute to a public understanding of a very broad audience of interested Alaskans.

It is no secret: Bristol Bay is a top priority to the Alaska public. In fact, the high interest level generated a November 2014 ballot measure: The Alaska Bristol Bay Mining Ban Question, Ballot Measure 4. See <http://www.elections.alaska.gov/doc/bml/BM4-12BBay-ballot-language.pdf>.

I have the specific intent to publish or disseminate the information requested through the Senate Majority. Publication shall occur via constituent newsletters and the internet.

- iv. **Whether the disclosure is likely to contribute significantly to public understanding of government operations or activities.**

The disclosure will significantly contribute to Alaska’s understanding of EPA operations and activities.

If this disclosure does not come from the EPA (about the EPA's January 2014 Assessment) there is no alternative. The EPA Assessment is the primary reason a multi-billion-dollar-project (with significant economic impacts to the Alaska economy) may get shut down. The mystery-science behind the Assessment is critical to the public's understanding.

Many questions remain: Why did the Assessment focus on those listed "disaster scenarios?" Who conducted the environmental fall-out assessment? Was the operational process for peer-review correctly adhered to? Who did the peer-review? Were there objections to the "fantasy fall-out scenarios?" How much "active consultation" was done with mining representatives? What activities were coordinated with environmental organizations? Is there any evidence the "science" was "conclusion-driven?"

The public has a right to know.

Next, the EPA must consider two conditions to determine whether a request is primarily in the commercial interest of the requestor:

- i. Whether the request has a commercial interest that would be furthered by the requested documents; and
- ii. Whether any such commercial interest outweighs the public interest in disclosure. 40 C.F.R. § 2.107(1)(3).

There is no commercial interest in this request. I work on behalf of the Alaska Senate Majority asking on behalf of the Alaska public. There is zero commercial interest. None.

- i. **Whether the request has a commercial interest that would be furthered by the requested documents.**

There is zero commercial interest.

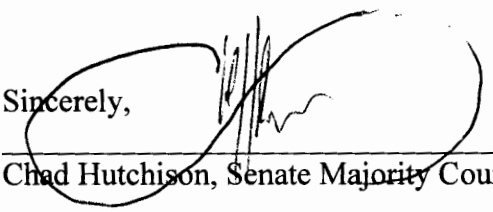
- ii. **Whether any such commercial interest outweighs the public interest in disclosure. 40 C.F.R. § 2.107(1)(3).**

There is zero commercial interest.

The records are requested within twenty working days. If the records cannot be produced within twenty working days, I request that the EPA contact me ([chad.hutchison@akleg.gov](mailto:chad.hutchison@akleg.gov)) for an explanation of progress. I can also be contacted via phone (907) 465-6858 (Jan. – April) or (907) 451-2157 (May – Dec.).

Your efforts on this matter are appreciated.

Sincerely,

  
Chad Hutchison, Senate Majority Counsel